

AGREEMENT FOR EMPLOYMENT SERVICES

This Agreement for Services ("Agreement") is made as of the date next to the last signature hereto (the "Effective Date") by and between San Luis Obispo County (hereinafter "County"), and MarketCher (hereinafter "Administrator") with reference to the following facts.

RECITALS

WHEREAS, on December 13, 2011, the County of San Luis Obispo entered into an Agreement for Special Services with Administrator wherein Administrator to perform specialized administrative services for the County and the San Luis Obispo Business Improvement District ("CBID"); and

WHEREAS, on December 17, 2013, the County, on behalf of the CBID, approved Amendment No. 1 extending the term of the agreement for twenty-four (24) months beginning January 1, 2014 and ending December 31, 2015; and

WHEREAS, on December 16, 2014, the County, in behalf of the CBID, approved Amendment No. 2 which provided for annual performance reviews and subsequent salary increases based upon Administrator receiving a "satisfactory" or above rating. Increases would be a rate not less than the Consumer Price Index – All Urban Consumers (CPI-U) for the California region as published by the U. S. Department of Labor, Bureau of Labor Statistics; and

WHEREAS, Administrator has satisfactorily performed said services pursuant to the Agreement; and

WHEREAS, on September 23, 2015, the CBID Advisory Board approved recommending to the Board of Supervisors that the County to contract with Administrator to continue to provide specialized administrative services for the County and the CBID; and

WHEREAS, the Administrator represents that it is a duly qualified to provide services described herein; and

WHEREAS, the Administrator provides special services and County has no employees available to do such work; and

WHEREAS, the Administrator is willing, able and capable to provide the desired services to County/CBID in accordance with the terms and conditions hereinafter set forth; and

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

1. Scope of Services.

1.1 Administration of the CBID.

Administrator shall perform the services as shown in the Scope of Work attached as Exhibit A within the times or dates agreed upon with the CBID Advisory Board.

1.2 Cooperation with CBID.

Administrator shall work closely and cooperatively with the County, CBID and the appointed CBID staff in the performance of all work hereunder.

1.3 Performance Standard.

Administrator will perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in the Administrator's profession.

1.4 Assigned Personnel.

In the event that Administrator has any employees and desires have them assist with the work as described in Paragraph 1.1, Administrator shall assign only competent personnel to perform work hereunder. In the event that at any time County and/or CBID, for no good cause shown, desires the removal of any person or persons assigned by the Administrator to perform any work hereunder, the Administrator shall remove such person or persons immediately upon receiving written notice from County or CBID.

2. Payment.

For all services and incidental costs required hereunder, the Administrator shall be compensated for the services as set forth Section 1.1 of this Agreement. Total cost of services shall not exceed \$125,340 per year plus expenses as noted below. The Administrator shall invoice the County monthly and CBID for all services provided hereunder.

- \$10,445 per month
- Mileage shall be paid at the Federal rate.
- Meals and Lodging rates will be paid at the rates set forth in the County's approved Travel Policy.

- Postage and Office supplies
- A dedicated phone line
- Reimbursements for any event, conference or workshop that the Administrator attends on behalf of the CBID Advisory Board.

A performance review will take place each year on January 1 for the term of this Agreement. Should the Administrator receive a "satisfactory" or above rating on her annual performance review, Administrator will be eligible for a salary cost of living increase ("COL Increases") at a rate not less than the Consumer Price Index – All Urban Consumers (CPI-U) for the California region as published by the U. S. Department of Labor, Bureau of Labor Statistics, based on the amount of Administrator's salary.

Administrator's salary shall not be adjusted downward as a result of a decrease in the above-referenced Consumer Price Index.

3. Employment Status and Tenure.

Nothing in this Agreement shall be construed as preventing, limiting or otherwise interfering with the right of the County and/or CBID to terminate the services of Administrator.

Further, nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Administrator to resign at anytime from her position with the CBID, subject only to the provisions set forth in section 4, paragraph (b) of this Agreement.

Administrator understands and agrees that this term of employment is governed only by this Agreement and that no right of tenure is created hereby.

4. Termination.

(a) Administrator shall serve at the will and pleasure of the County and/or CBID Advisory Board and may be terminated without cause. In the event, the County and/or CBID Advisory Board decides to terminate Administrator's contract, County and/or CBID Advisory Board shall give written notice of at least 30 days prior to the effective date of such termination.

(b) In the event Administrator decides to terminate her contract with the County and/or CBID, Administrator shall give written notice at least 30 days prior to the effective date of such termination.

5. Term of Agreement.

The term of this agreement shall be for twenty-four (24) months beginning January 1, 2016 and ending December 31, 2017 except in the event that the funding of the CBID through assessments upon the lodging businesses within its boundaries is not renewed for FY 2016-17 or FY 2017-18. At which time all work will cease, this Agreement shall be terminated and the Agency will submit an invoice for work completed to date. The term may be extended by mutual written agreement of the parties herein.

6. Prosecution of Work.

6.1 Commencement of Work.

The execution of this Agreement by the County shall constitute the Administrator's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for the Administrator's performance of this Agreement shall be extended by a number of days equal to the number of days the Administrator has been delayed.

6.2 Extra or Changed Work.

Only the CBID Advisory Board, in conjunction with County staff, may authorize extra or changed work or waive Agreement requirements. Said authorization and/or waiver must be in writing.

Representations and Warranties of Administrator

6.3 Standard of Care

The Administrator hereby warrants that all its work will be performed in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of the Administrator's work by County and CBID shall not operate as a waiver or release.

6.4 Status of Administrator.

The parties intend that Administrator, in performing the services specified herein, shall act as a contract representative of the CBID and County only, and as such, the CBID and County shall control the work and the manner in which it is performed. The Administrator is an independent contractor and is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, insurance, bonus, or similar benefits County provides its employees.

While the Administrator shall be contracted to the CBID during the term of the Agreement, the Administrator will bring to the CBID Advisory Board, for their information, all synergistic opportunities which emerge that would be mutually beneficial for all parties but at the same time would not jeopardize the approved scope of work. Further, the Administrator agrees to not represent any individual lodging property in San Luis Obispo County, or any Tourism Business Improvement District, or any destination marketing agency in California. The Administrator is prohibited from receiving anything of value or benefit to the Administrator from any CBID vendors based on the placement of CBID business with said vendors.

Such opportunities shall not in any way impact, effect or interfere with the approved scope of work to be provided by the Administrator to the CBID Advisory Board and the County.

6.5 Taxes.

Except as elsewhere herein provided, the Administrator agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. The Administrator agrees to indemnify and hold County and CBID harmless from any liability which it may incur to the United States or to the State of California as a consequence of the Administrator's failure to pay, when due, all such taxes and obligations.

6.6 Records Maintenance.

The Administrator shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County and CBID for inspection at any reasonable time.

6.7 Conflict of Interest.

The Administrator covenants that it presently has not interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder.

6.8 Nondiscrimination.

The Administrator shall comply with all applicable federal, state and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in the Agreement are incorporated by this reference.

7. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills and payments sent by mail shall be addressed as follows:

TO: Nikki J. Schmidt
Administrative Office
County of San Luis Obispo
1055 Monterey Street, Room D430
San Luis Obispo CA 93408

TO: MarketCher
Cheryl Cuming
535 Le Point Street
Arroyo Grande CA 93420

and when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices, bills, and payments shall be deemed at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills, and payments are to be given notice pursuant to this paragraph.

8. Resolution of Disputes.

The parties agree that disputes, which cannot be resolved by the parties alone, will be resolved by the following process:

8.1 Mediation.

The parties agree to mediate any dispute or claim between them arising out of this Agreement or any resulting transaction before resorting to arbitration or court action. The mediation fee, if any, shall be divided equally among the parties involved. In advance of the mediation, the parties shall voluntarily exchange all documents requested by the other party that relate to the dispute. Issues concerning discovery shall be submitted to the mediator prior to mediation; the mediator's decision shall be binding upon the parties to the dispute. Statements made during any mediation proceeding shall not be admissible in a subsequent arbitration or court proceeding, and shall be privileged to the full extent permitted under California law. If any party commences an arbitration or court action based on a dispute or claim to which this paragraph applies without first attempt to resolve the matter through mediation, then in the discretion of the arbitrator(s) or judge, the other party may apply to such arbitrator or judge for an order staying the arbitration or court action pending mediation.

9. Termination of Contract for Convenience of Either Party.

Either party may terminate this contract, or any extension thereof, at any time by giving to the other party 30 days written notice of such termination. Termination shall have no effect on upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. Contractor shall be paid for all work satisfactorily completed prior to the effective date of said termination.

10. Termination of Contract for Cause.

If Administrator fails to perform the Administrator's duties to the satisfaction of the County or CBID or if the Administrator fails to fulfill in a timely and professional manner the Administrator's obligations under this Contract or if the Administrator shall violate any of the terms or provisions of this Contract or if the Administrator, the Administrator's agents or employees fail to exercise good behavior either during or outside of working hours that is of such a nature as to bring discredit upon the County and/or CBID, then County shall have the right to terminate this Agreement effective immediately upon the County giving written notice thereof to the Administrator. Termination shall have no affect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. The Administrator shall be paid for all work satisfactorily completed prior to the effective date of such termination. If County's termination of the Administrator for cause is defective for any reason, including but not limited to County's reliance on erroneous facts concerning the Administrator's performance, or any defect in notice thereof, County's maximum liability shall not exceed the amount payable to the Administrator under paragraph 2 above.

11. No Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

12. Applicable Law and Forum.

This Agreement shall be construed and interpreted according to the substantive law of the State of California. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of San Luis Obispo.

13. Indemnification.

The Administrator shall defend, indemnify and hold harmless the County, its officers and employees from all claims, demands, damages, costs, expenses, judgments, attorney fees, liabilities or other losses that may be asserted by any person or entity, and that arise out of or are made in connection with the acts or omissions relating to the performance of any duty, obligation or work hereunder. The obligation to indemnify shall be effective and shall extend to all such claims and losses, in their entirety, even when such claims or losses arise from the comparative negligence of the County, its officers and employees. However, this indemnity will not extend to any

claims or losses arising out of the sole negligence or willful misconduct of the County, its officers and employees.

It is the intent of the parties to provide the County the fullest indemnification, defense, and "hold harmless" rights allowed under the law. If any word(s) contained herein are deemed by a court to be in contravention of applicable law, said word(s) shall be severed from this contract and the remaining language shall be given full force and effect.

14. Non-Assignment of Agreement.

Inasmuch as this Contract is intended to secure the specialized services of the Administrator, the Administrator may not assign, transfer, delegate or sublet any interest therein without the prior written consent of County and any such assignment, transfer, delegation, or sublease without the County and CBID's prior written consent shall be considered null and void.

15. INSURANCE.

Marketing Agency, at its sole cost and expense, shall purchase and maintain the insurance policies set forth below on all of its operations under this Agreement. Such policies shall be maintained for the full term of this Agreement and the related warranty period (if applicable). Any failure to comply with reporting provisions(s) of the policies referred to above shall not affect coverage provided to the County, its officers, employees, volunteers and agents. For purposes of the insurance policies required hereunder, the term "County" shall include officers, employees, volunteers and agents of the County, individually or collectively.

15.1 Minimum Insurance Requirements.

The following policies shall be maintained with insurers authorized to do business in the State of California and shall be issued under forms of policies satisfactory to the County:

15.2 Commercial General Liability Insurance Policy ("CGL")

Policy shall include coverage at least as broad as set forth in Insurance Services Office (herein "ISO") Commercial General Liability coverage. (Occurrence Form CG 0001) with policy limits not less than the following:

\$2,000,000 per occurrence for bodily injury and property damage, including products-completed operations, personal injury and advertising injury.

The general aggregate limits shall apply separately to Marketing Agency's work under this Agreement.

15.3 Business Automobile Liability Policy ("BAL")

Policy shall include coverage at least as broad as set forth in Insurance Services Office Business Automobile Liability Coverage, Code 1 "Any Auto" (Form CA 0001) or if contractor has no owned autos, code 8 (hired) and 9 (non-owned). This policy shall include a minimum combined single limit of not less than One-million (\$1,000,000) dollars for each accident, for bodily injury and/or property damage. Such policy shall be applicable to vehicles used in pursuit of any of the activities associated with this Agreement. Marketing Agency shall not provide a Comprehensive Automobile Liability policy which specifically lists scheduled vehicles without the express written consent of County.

15.4 Workers' Compensation And Employers' Liability Insurance Policy ("WC/EL")

This policy shall include at least the following coverages and policy limits:

15.4.1 Workers' Compensation insurance as required by the laws of the laws of the State of California; and

15.4.2 Employer's Liability Insurance Coverage B with coverage amount not less than one-million (\$1,000,000) dollars each accident / Bodily Injury (herein "BI"); one-million (\$1,000,000) dollars policy limit BI by disease; and, one-million (\$1,000,000) dollars each employee BI disease.

15.5 Deductibles And Self-Insurance Retentions

Any deductibles and/or self-insured retentions which apply to any of the insurance policies referred to above shall be declared in writing by Marketing Agency and approved by the County before work is begun pursuant to this Agreement. At the option of the County, Marketing Agency shall either reduce or eliminate such deductibles or self-insured retentions as respect the County, its officers, employees, volunteers and agents, or shall provide a financial guarantee satisfactory to the County guaranteeing payment of losses and related investigations, claim administration, and/or defense expenses.

15.6 Endorsements

All of the following clauses and endorsements, or similar provisions, are required to be made a part of insurance policies indicated in parentheses below:

15.6.1 A "Cross Liability," "Severability of Interest" or "Separation of Insureds" clause (CGL & BAL);

15.6.2 The County of San Luis Obispo, its officers, employees, volunteers and agents are hereby added as additional insureds with respect to all

liabilities arising out of Marketing Agency's performance of work under this Agreement (CGL & BAL);

15.6.3 If the insurance policy covers an "accident" basis, it must be changed to "occurrence" (CGL)

15.6.4 This policy shall be considered primary insurance with respect to any other valid and collectible insurance County may possess, including any self-insured retention County may have, and any other insurance County does possess shall be considered excess insurance only and shall not be called upon to contribute to this insurance (CGL, BAL, & PL);

15.6.5 No cancellation or non-renewal of this policy, or reduction of coverage afforded under the policy, shall be effective until written notice has been given at least thirty (30) days prior to the effective date of such reduction or cancellation to County at the address set forth below (CGL, BAL, WC /EL & PL);

15.6.6 Marketing Agency and its insurers shall agree to waive all rights of subrogation against the County, its officers, employees, volunteers and agents for any loss arising under this Agreement (CGL); and

15.6.7 Deductibles and self-insured retentions must be declared (All Policies).

15.7 Absence Of Insurance Coverage

County may direct Marketing Agency to immediately cease all activities with respect to this Agreement if it determines that Marketing Agency fails to carry, in full force and effect, all insurance policies with coverages at or above the limits specified in this Agreement. Any delays or expense caused due to stopping of work and change of insurance shall be considered Marketing Agency's delay and expense. At the County's discretion, under conditions of lapse, the County may purchase appropriate insurance and charge all costs related to such policy to Marketing Agency.

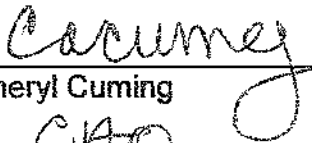
15.8 Proof of Insurance Coverage and Coverage Verification.

Prior to commencement of work under this Agreement, and annually thereafter for the term of this Agreement, Marketing Agency, or each of Marketing Agency's insurance brokers or companies, shall provide County a current copy of a Certificate of Insurance, on an Accord or similar form, which includes complete policy coverage verification, as evidence of the stipulated coverages. All of the insurance companies providing insurance for Marketing Agency shall have, and provide evidence of, a Best Rating Service rate of A VI or above. The Certificate of Insurance and coverage verification and all other notices related to cancellation or non-renewal shall be mailed to the County Administrative Office.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as set forth below.

MARKETCHER

COUNTY OF SAN LUIS OBISPO

By: 
Cheryl Cuming

By: _____

Title: CAO

AUTHORIZED BY BOARD ACTION

Date: 11/10/15

_____, 2015

ATTEST

By: _____
Clerk of the Board of Supervisors

DATED: _____

APPROVED AS TO FORM AND LEGAL EFFECT:
RITA L. NEAL
County Counsel

By: 
Chief Deputy County Counsel

DATED: 11/16/15